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APR 03 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE
THE NORTHERN MARIANA ISLANDS

JOHN BRADY BARRINEAU,
Plaintiff,

v.

PRO MARINE TECHNOLOGY and CABRAS
MARINE CORPORATION,
Defendants.

) CV NO. 05-0028

) **PLAINTIFF'S NOTICE OF MOTION AND**
) **MOTION FOR LEAVE TO AMEND**
) **PLEADINGS**

) Date: May 11, 2006
) Time: 9:00 a.m.
) Judge: Munson

NOTICE OF MOTION and MOTION

Please take notice that on May 11, 2006, at nine o'clock (9:00) a.m., or as soon thereafter as counsel can be heard, in the United States District Court for the Northern Mariana Islands in Garapan, Saipan, CNMI, Plaintiff John Brady Barrineau ("Plaintiff"), by his attorneys, Bruce Berline and William Fitzgerald, will move the court for leave to file a First Amended Complaint, pursuant to Fed.R.Civ P. Rules 15(a) and 20 to amend Plaintiff's complaint by adding two defendants - Kenneth Collard and Chie N. Collard.

ORIGINAL

ARGUMENT

I. FACTS

On September 14, 2005, Plaintiff filed a complaint in this action naming defendants Pro Marine Technology ("PMT") and Cabras Marine Corporation. This Court issued a Case Management Scheduling Order on November 30, 2005. That Order set April 3, 2006, as the deadline for amending pleadings and joining parties.

Plaintiff now brings this timely motion for leave to amend his complaint in order to add Kenneth Collard and Chie N. Collard as defendants. Mr. Collard is directly responsible for turning off Plaintiff's air supply while Plaintiff was under water. Furthermore, Mr. Collard's liability may also arise under Longshore and Harbor Workers' Compensation Act, 33 U.S.C 901 *et seq.* ("LHWCA"). The LHWCA mandates that an employer must secure payment of compensation as provided under the LHWCA. *See* 33 U.S.C. §932. Where the employer is a corporation, section 938 of the LHWCA provides for joint and several liability of the president, secretary and treasurer of the company which failed to provide the mandatory compensation.

Mr. Collard is the president of Pro Marine Technology and Mrs. Collard is the secretary and/or the treasurer. Should Plaintiff be found to be a maritime worker covered under the purview of the Longshore and Harbor Workers' Compensation Act as opposed to a seaman under the Jones Act, Mr. and Mrs Collard are liable because they are officers of Pro Marine Technology.

Accordingly, Plaintiff has filed this motion to seek leave from this Court to file his First Amended Complaint, a copy of which is attached to this motion as Exhibit "A."

II. LEAVE TO AMEND A PLEADING AND JOIN ADDITIONAL PARTIES IS LIBERALLY AND FREELY GIVEN BY THE COURT.

Rule 15(a) of the Federal Rules of Civil Procedure allows for a party to amend a pleading by leave of court. The rule also provides that leave to amend a pleading "shall be freely given when justices so requires." Fed. R. Civ. Pro. 15(a); *See Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962)(district court directed to grant leave to amend unless good reason to deny such as undue delay, bad faith, dilatory motive, repeated failed attempts to cure deficiencies or undue prejudice). Rule 15 embodies a strong policy in favor of liberal amendments to the pleadings. *See Desert Empire Bank v. Insurance Co. of North America*, 623 F.2d 1371, 1376 (9th Cir. 1980). Accordingly, Rule 15 should be liberally construed so as to decide the case on the merits rather on the pleadings. *Foman v. Davis* 371

1 U.S. at 182.

2 Rule 20(a) allows joinder of several defendants as long as a right to relief asserted against a
3 defendant "arises out of the same transaction or occurrence, and some question of law or fact common
4 to all parties will arise in the action." *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*,
5 558 F.2d 914, 917(9th Cir. 1977). Like Rule 15(a), Rule 20(a) "is to be construed liberally in order to
6 promote trial convenience and to expedite the final determination of disputes, thereby preventing
7 multiple lawsuits." *Id.*

8 **III. PLAINTIFF SHOULD BE GIVEN LEAVE AS THERE EXISTS NO BASIS TO DENY**
9 **THE REQUESTS AT THIS STAGE IN THE LITIGATION.**

10 Here, it is alleged that Mr. Kenneth Collard personally turned of Plaintiff's air while Plaintiff
11 was under water. Moreover, Mr. Collard is the president of PMT. As explained above, Mr. Collard
12 will be liable, in the alternative, should Plaintiff be held to be a maritime worker under the LHWCA.

13 As with Mr. Collard, Mrs. Collard, by virtue of her position as secretary and treasurer of PMT,
14 will also be liable should Plaintiff not meet the test of a seaman but instead come under the purview of
15 the LHWCA.

16 Undoubtedly, the claims asserted against Mr. and Mrs. Collard in Exhibit A are substantially
17 and logically related to the occurrence which resulted in Plaintiff's injuries. The joining of Mr. and Mrs.
18 Collard to this matter is done in conformance with the Case Management Conference Order and is thus
19 timely under this Court's Order. This motion constitutes the first time Plaintiff has requested this court
20 to amend the pleadings. This motion is not made for purposes of delay, or for dilatory tactics and
21 presents no prejudice to the defendants presently named in this matter. *Foman v. Davis*, 371 U.S. at
22 182. Accordingly, this court should grant Plaintiff leave to file his first amended complaint.

23 **IV. CONCLUSION**

24 For the foregoing reasons, Plaintiff requests that this Court grant him leave to file the attached
25 First Amended Complaint.

26 Dated this 3rd day of April, 2006.



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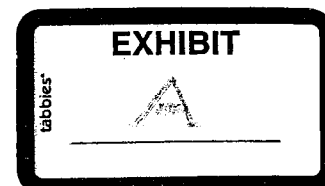
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOHN BRADY BARRINEAU,)	CV NO. 05-0028
)	
Plaintiff,)	
)	[proposed] FIRST AMENDED COMPLAINT
v.)	DEMAND FOR JURY TRIAL
)	
PROMARINE TECHNOLOGY, CABRAS)	
MARINE CORPORATION, KENNETH)	
COLLARD)	
)	
Defendants.)	

ACTION UNDER SPECIAL RULE FOR SEAMEN
TO SUE WITHOUT SECURITY AND PREPAYMENT
OF FEES, 28 U.S.C. § 1916

Plaintiff John Brady Barrineau, by and through his counsel of record, William Fitzgerald and
Bruce Berline, allege as follows:



PARTIES

1
2 1. Plaintiff John Brady Barrineau ("Plaintiff Barrineau") is a citizen and domiciliary of the
3 Commonwealth of the Northern Mariana Islands ("CNMI") and presently resides on Saipan.

4 2. Plaintiff Barrineau is a seaman pursuing his remedies under Section 33 of the Merchant's
5 Seaman's Act of June 5, 1920, and all amendments thereto, and all other applicable maritime and tort
6 law in the premises. Alternatively, Plaintiff was engaged in the traditional work of a maritime worker,
7 the type of which is covered under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C.
§901 et seq., ("LHWCA").

8 3. Defendant PRO MARINE TECHNOLOGY ("PMT") is a corporation organized pursuant
9 to the laws of Guam which at all times relevant to this complaint transacted business within the CNMI.

10 4. Defendant CABRAS MARINE CORPORATION ("CMC") is a corporation organized
11 pursuant to the laws of Guam which at all times relevant to this complaint transacted business within
12 the CNMI.

13 5. Defendant KENNETH COLLARD ("Mr. Collard") is a citizen of Guam and is the
14 President of PMT.

15 6. Defendant CHIE N. COLLARD ("Mrs. Collard") is a citizen of Guam and is the Treasurer
16 and/or Secretary of PMT.

17 7. The M/V Cajun is, and was at all times relevant to this complaint, a United States flagged
18 ocean going vessel used for the transport of people, equipment and/or goods by water owned by
19 defendant CMC and, based upon information and belief, is presently operating out of the port of Saipan
in this district.

20 8. Defendants JOHN DOES 1-25 and ROE ENTITIES 1-25 are sued herein under fictitious
21 names for the reason that, despite diligent and good faith efforts to obtain information, their true names,
22 identities, and capacities, are presently unknown to Plaintiff, except that they include, but are not limited
23 to:

24 (a) vessel owners, manufacturers, servicers, service facilities, designers, operators,
25 lessees or charterers, and/or the agents, servants, employees, employers, representatives, co-venturers,
26 associates, vendors, suppliers, manufacturers, lessors, subcontractors or contractors of the named
27 Defendants.
28

JURISDICTION/JURY TRIAL

9. This court has personal jurisdiction over Plaintiff.

10. This court has personal jurisdiction over Defendants PMT, CMC, Mr. Collard and Mrs. Collard.

11. This court has *in rem* jurisdiction over the Defendant M/V "CAJUN," simultaneously with all engines, tackle, freight, equipment, and other stored items and appurtenances.

12. This court has original subject matter jurisdiction of Plaintiff's admiralty and maritime claims pursuant to the *Jones Act*, 46 U.S.C. §688, the LHWCA, and general maritime law, and pursuant to 28 U.S.C. §1333 and 28 U.S.C. §1331, saving to Plaintiff all other remedies to which they are otherwise entitled.

13. This court has supplemental, pendent and/or ancillary jurisdiction over Plaintiff's remaining tort and related claims.

14. The factual and jurisdictional grounds upon which Plaintiff's claims are premised entitle Plaintiff to a trial by a CNMI jury except those designated as coming within the meaning of Rule 9(h) of the *Federal Rules of Civil Procedure*, and Plaintiff hereby demands a trial by jury in this matter.

FACTS

15. This matter contains admiralty claims along with general maritime claims.

16. Plaintiff Barrineau at all relevant times described in this Complaint, was hired and employed by Defendant PMT as a commercial deep-sea diver. As a commercial deep-sea diver, Plaintiff Barrineau is constantly exposed to the perils of the ocean.

17. Defendant PMT was at all times relevant to this complaint, in business as a vessel owner, and/or operator of vessels, and was the owner, lessee, lessor, charterer, subcharterer, operator, and/or owner *pro hac vice* of the M/V Cajun - a U.S. flagged vessel built to transport goods and passengers on navigable waters.

18. Defendant PMT was contracted to clean the hull of the M/V Cpl. Louis J. Hauge, Jr. (hereinafter, "M/V Hauge") while it was moored in Apra Harbor, Guam.

19. Defendant PMT used the M/V Cajun to complete the M/V Hauge hull cleaning. The M/V Cajun's mission was to transport Plaintiff Barrineau, as well as others, to and from the M/V Hauge each day while the maintenance was completed.

1 20. The M/V Cajun also served as a dive station for Plaintiff Barrineau, as well as others.
2 As such, the M/V Cajun held all of the equipment necessary to complete the underwater mission of
3 scrubbing the hull of the M/V Hauge, including the air supply used for Plaintiff Barrineau's dive. As
4 one of the commercial deep sea diver tasked to perform the maintenance on the Hauge, Plaintiff
5 Barrineau contributed to the M/V Cajun's mission. Plaintiff Barrineau duties also contributed to the
6 M/V Hauge's function.

7 21. Plaintiff Barrineau's air initiated from the dive compressor aboard the M/V Cajun and
8 was delivered to Plaintiff Barrineau via a flexible umbilical assembly.

9 22. On or about May 22, 2005, Plaintiff Barrineau was taken by the M/V Cajun to the M/V
10 Hauge. Plaintiff Barrineau while aboard the M/V Cajun assisted with mooring lines and other on board
11 duties. Once the M/V Cajun was moored to the M/V Hauge, Plaintiff Barrineau donned his deep sea
12 diving gear, entered the water, submerged to a depth of about 35 to 40 feet, and began scrubbing the hull
13 of the M/V Hauge with a hydraulic scrubber.

14 23. While in the midst of scrubbing the hull, Plaintiff Barrineau's air supply was, suddenly
15 and without any warning, turned off completely by Defendant Kenneth Collard and/or other people
16 aboard the M/V Cajun.

17 24. Defendant Kenneth Collard turned off a valve which directly controlled the flow of
18 Plaintiff's air supply which he was using while underwater.

19 25. Plaintiff Barrineau began sinking below the hull of the M/V Hauge.

20 26. Plaintiff Barrineau managed to free himself from his equipment, including, without
21 limitation, his weight belt, diving apparatus, and the hydraulic scrubber and began a rapid ascent.
22 During the ascent, Plaintiff Barrineau lost consciousness and hit his head on the hull of the ship, causing
23 it to bleed.

24 27. As a result of his air supply being suddenly and completely shut off, Plaintiff Barrineau
25 has sustained permanent and painful injuries of body and mind. Moreover, as a result of these injuries,
26 Plaintiff Barrineau presently and in the future will continue to suffer physical pain and mental anguish
27 and will continue to incur medical, hospital and other related expenses. Additionally, Plaintiff Barrineau
28 has been and is now and will be in the future prevented from participating in and enjoying the normal
pleasures of life to which Plaintiff was formerly accustomed. Accordingly, Plaintiff has sustained and
incurred damages in an amount according to proof at trial.

1 28. At the time of Plaintiff Barrineau's injuries, the M/V Cajun was in navigation, and upon
2 navigable waters.

3 29. At the time of Plaintiff Barrineau's injuries, Plaintiff Barrineau was acting within the
4 course and scope of his employment and performing his required duties.

5 30. At the time of Plaintiff Barrineau's injuries, he was engaged in the traditional work of
6 a seaman, and/or was doing the M/V Cajun's work and enjoyed the status of a seaman as the term is
7 used in the Jones Act 46 U.S.C. §688.

8 31. In the alternative, Plaintiff was engaged in the traditional work of a maritime worker, the
9 type of which is covered under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901
et seq., ("LHWCA").

10 32. PMT failed to secure payment of compensation as mandated by the LHWCA and thus
11 PMT, along with its president, secretary and treasurer are jointly, severally, and personally liable for
12 Plaintiff's damages in an amount according to proof at trial.

13 **COUNT 1: JONES ACT NEGLIGENCE**

14 33. Plaintiff repeats and realleges, and incorporate herein by reference, each and every
15 allegation contained in the preceding paragraphs.

16 34. Plaintiff was, for all times relevant to this complaint, a seaman as that term is used in the
17 Jones Act. Plaintiff's injuries were caused by the negligence of defendant PMT, its agents, servants,
officers and/or employees.

18 35. Defendant PMT, its agents, servants, officers and/or employees owed certain duties of
19 care to Plaintiff Barrineau, such duties included, without limitation, the duty to provide Plaintiff with
20 a reasonably safe place in which to work, the duty to provide reasonably safe conditions in which to
21 work, and the duty to provide reasonably safe equipment with which to work.

22 36. Defendant PMT owed a further duty to guard against risks and dangers of which it knew
23 or by the exercise of due care should have known about including without limitation the risk of turning
24 off an open air valve, and/or the risk of turning off a diver's air supply.

25 37. Defendant PMT owed a further duty of care to Plaintiff to provide Plaintiff with
26 reasonably adequate and competent medical attention.

27 38. Defendant PMT owed a further duty of care to Plaintiff Barrineau to inspect the premises
28 where Plaintiff Barrineau was working, to inspect the equipment used by Plaintiff Barrineau and to take

1 reasonable precautions to protect Plaintiff from possible danger.

2 39. Defendant PMT owed a further duty of care to Plaintiff to not instruct its employees,
3 including Plaintiff, to perform tasks by using a number of employees or a procedure or method with
4 which it knew or in the exercise of reasonable care should have known, would result in injuries.

5 40. Defendant PMT owed a duty to Plaintiff Barrineau to comply with industry customs and
6 safety rules, regulations or statutes.

7 41. Defendant PMT breached such above duties owed to Plaintiff.

8 42. Furthermore, Defendant PMT, its agents servants officers and/or employees failed to duly
9 warn and/or notify Plaintiff of dangerous condition of and aboard the Vessel.

10 43. Defendant PMT, its agents servants officers and/or employees failed to use reasonable
11 judgment in hiring and employing inspectors, surveyors, and other people and/or entities who inspected,
12 tested, looked at, reported on, or was responsible in any other way for the safety and seaworthiness of
13 the equipment used for the diving operation and the M/V Cajun itself.

14 44. Moreover, Plaintiff's air supply and/or the controls for his air supply was within the
15 exclusive control of Defendant PMT, including their agents, servants, officers and/or other employees
16 and the events leading up to and causing Plaintiff Barrineau's injuries are such as in the ordinary course
17 of things would not occur if the one having exclusive control uses proper care, and thus the doctrine of
18 *Res Ipsa Loquitur* is applicable and should be applied in this case.

19 45 Further, at the time Plaintiff was injured, there existed certain rules, regulations, codes
20 and/or statutes which were designed to secure and promote the safety of Plaintiff and others. Based on
21 information and belief, Defendant PMT was in violation of such rules, regulations, codes and/or statutes
22 at the time Plaintiff Barrineau was injured and thus Defendant PMT is strictly liable for such injuries
23 pursuant to the doctrine of negligence per se as applied under the Jones Act.

24 46. The negligence of Defendant PMT, their agents, servants, officers and/or employees,
25 resulted in, or at the very least, played the slightest part in bringing about, Plaintiff Barrineau's injuries,
26 including his physical, mental, economic and non-economic damages.

27 **COUNT II: UNSEAWORTHINESS**

28 47. Plaintiff Barrineau repeats and realleges, and incorporates herein by reference, each and
every allegation contained in the preceding paragraphs.

1 48. The injuries and damages which were sustained by Plaintiff was also caused by the
2 unseaworthy condition of the M/V Cajun as the M/V Cajun or part of the M/V Cajun, its gear,
3 equipment and/or crew were not reasonably fit for their intended purposes.

4 49. The unseaworthy condition of the M/V Cajun brought about or actually caused Plaintiff
5 Barrineau's injuries and Defendant CMC and/or PMT, therefore, is liable for those injuries and
6 damages.

7 **COUNT III: MAINTENANCE AND CURE/WAGES**

8 (In Admiralty)

9 50. This is an admiralty or maritime claim within the meaning of Rule 9(h), Federal Rules
10 of Civil Procedure. Plaintiff claims maintenance and cure and wages in such amount as may be
11 determined by the court on this cause of action.

12 51. Plaintiff repeat and reallege, and incorporate herein by reference, each and every
13 allegation contained in the preceding paragraphs.

14 52. Plaintiff's injuries and damages occurred while he was acting within the course and scope
15 of his service as a seamen.

16 53. As a result of the previously described events, Plaintiff is entitled to maintenance and
17 cure until such time as he achieves maximum medical cure.

18 54. Defendant PMT and/or defendant CMC has failed to pay any maintenance or cure to
19 Plaintiff.

20 55. Defendant PMT and/or defendant CMC's failure to pay Plaintiff Barrineau maintenance
21 and cure is willful and arbitrary and thus Plaintiff Barrineau is entitled to attorney's fees.

22 56. As a further result of the previously described events, Plaintiff is entitled to receipt of his
23 unpaid wages.

24 **COUNT IV: NEGLIGENCE**

25 57. Plaintiff repeats and realleges, and incorporate herein by reference, each and every
26 allegation contained in the preceding paragraphs.

27 58. Without waiving Plaintiff's above causes of action against Defendants, Plaintiff alleges
28 in the alternative that Defendants PMT, CMC, Mr. Collard and/or Mrs. Collard owed Plaintiff certain
duties of care.

 59. Defendants breached such duties owed to Plaintiff.

